

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

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6 UNITED STATES OF AMERICA

18-CR-6094(G)

7

vs.

8 XAVIER TORRES,

Defendant.

Rochester, New York  
November 3, 2021  
8:30 a.m.

9 - - - - - X

VOLUME 11

10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HONORABLE FRANK P. GERACI, JR.  
12 UNITED STATES DISTRICT JUDGE

13

14 JAMES P. KENNEDY, JR., ESQ.  
15 United States Attorney  
16 BY: ROBERT A. MARANGOLA, ESQ.  
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21 Appearing on behalf of the United States

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I N D E X

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WITNESS FOR THE GOVERNMENT

3

Shawn Adams  
4 Direct examination by Mr. Marangola Page 1030  
Cross-examination by Mr. Verrillo Page 1047  
5 Redirect examination by Mr. Marangola Page 1050

6

7

<u>EXHIBIT</u>	<u>RECEIVED</u>	
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Government rests		Page 1051
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P R O C E E D I N G S

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(WHEREUPON, the defendant is present; the jury is  
4 present).

08:36:59AM 5

**THE COURT:** Good morning.

6

**MR. MARANGOLA:** Good morning, Your Honor.

7

**THE COURT:** Ready to proceed, call your next  
8 witness.

9

**MR. MARANGOLA:** Yes, Your Honor. Government calls  
09:57:22AM 10 Detective Shawn Adams.

11

GOVERNMENT'S WITNESS, SHAWN ADAMS, SWORN

12

DIRECT EXAMINATION

13

**THE CLERK:** Please state your full name for the  
14 record and spell your last name.

09:57:43AM 15

16

**THE CLERK:** Shawn Adams. Shawn, S-H-A-W-N; Adams,  
A-D-A-M-S.

17

**THE REPORTER:** Thank you.

18

**THE CLERK:** Have a seat right up here.

19

**THE COURT:** Good morning.

09:58:17AM 20

**THE WITNESS:** Good morning.

21

22

**THE COURT:** Because you're behind plexiglas, you may  
remove your mask --

23

**THE WITNESS:** Thank you.

24

**THE COURT:** -- when you're testifying. Thank you.

09:58:22AM 25

You may proceed.

1                   **MR. MARANGOLA:** Thank you, Your Honor.

2 **BY MR. MARANGOLA:**

3 Q. Good morning, sir. Would you please introduce yourself to  
4 the jury?

09:58:27AM 5 A. I'm Detective Shawn Adams with the Buffalo Police  
6 Department.

7 Q. Detective Adams, how long have you been with the Buffalo  
8 Police Department?

9 A. Just over 20 years.

09:58:37AM 10 Q. And you're a detective?

11 A. Yes.

12 Q. How long have you been a detective?

13 A. Ten years.

14 Q. And what kinds of cases do you primarily investigate as a  
09:58:45AM 15 detective?

16 A. I'm in the Narcotics and Vice Unit.

17 Q. All right. Narcotics and Vice, so you investigate drug  
18 crimes then?

19 A. Yes.

09:58:51AM 20 Q. Detective, did there come a time on June 8th of 2016 that  
21 you were asked to assist the Orleans County Task Force in a  
22 particular narcotics investigation?

23 A. Yes.

24 Q. All right. How did you get involved, if you recall?

09:59:08AM 25 A. I got a call from an Erie County sheriff's deputy asking

1 for assistance.

2 Q. All right. And what did you do in connection -- what was  
3 the assistance they were looking for?

4 A. They were looking for help obtaining a search warrant.

09:59:24AM 5 Q. All right. Did you assist them in obtaining a search  
6 warrant that day?

7 A. I did.

8 Q. All right. Was that based on information from a couple of  
9 different sources?

09:59:34AM 10 A. Yes.

11 Q. All right. I'm not going to ask you what either officers  
12 said or any informants said, but do you recall whether or not  
13 they brought you an individual who had been arrested earlier  
14 that day?

09:59:45AM 15 A. Yes.

16 Q. And do you recall whether or not he was a former  
17 corrections officer?

18 A. Yes.

19 Q. All right. What was the location that you obtained a  
09:59:54AM 20 search warrant for on June 8th, 2016?

21 A. 299 Prospect in the City of Buffalo.

22 Q. All right. If we could put up Government's 64, which is in  
23 evidence. Detective, if you look on your monitor you should  
24 see it. Is it up on your screen?

10:00:15AM 25 A. Yes.

1 Q. Okay. Do you recognize what's shown in Government's 64?  
2 A. Yes. The house to the left of the tree is 299 Prospect.  
3 Q. All right. Can you circle the house that you know as 299  
4 Prospect?

10:00:30AM 5 A. I'm assuming this is a touch screen?

6 Q. Most of the time it is, yes. Let's see how --  
7 A. Just asking.

8 Q. All right. Today it is. You circled the house to the  
9 left of the tree in Government's 64; is that right?

10:00:46AM 10 A. Yes.

11 Q. That location is in the City of Buffalo; is that right?

12 A. Yes.

13 Q. Can you describe the premises of 299 Prospect Avenue?

14 A. It's a gray house, multiple unit.

10:01:01AM 15 Q. All right. When you say "multiple," do you remember how  
16 many?

17 A. Four.

18 Q. A Buffalo City Court judge authorized a search warrant for  
19 that location?

10:01:12AM 20 A. Yes, the front lower and rear lower apartments only.

21 Q. All right. So two of the four apartments?

22 A. Yes.

23 Q. All right. What did the search warrant authorize you to  
24 search for?

10:01:23AM 25 A. To search for heroin.

1 Q. All right. Do you see a building next to the right of  
2 299 Prospect Avenue in Government's 64?

3 A. Yes. That's 297 Prospect.

4 Q. 297 is the building directly to the right of it?

10:01:41AM 5 A. Yes.

6 Q. Can you describe 297 Prospect and compare it to 299  
7 Prospect?

8 A. It's almost identical.

9 Q. All right. Is it also gray? Are both locations gray and  
10:01:54AM 10 have black shutters?

11 A. Yes.

12 Q. Are there sidewalks to the right of each of those  
13 locations?

14 A. Yes.

10:01:59AM 15 Q. You indicated that you obtained a search warrant for 299  
16 Prospect?

17 A. Yes.

18 Q. Who was the target of the search warrant?

19 A. Xavier Torres.

10:02:09AM 20 Q. Do you see the person in court here today who was the  
21 target of that search warrant on June 8th, Xavier Torres?

22 A. Yes.

23 Q. Would you point to him and describe what he's wearing for  
24 the record?

10:02:22AM 25 A. He's behind you with a white button down shirt on next to

1 the defense attorney.

2 Q. Is he wearing a tie or not a tie?

3 A. No tie.

4                   **MR. MARANGOLA:** All right. Your Honor, may the  
10:02:35AM 5 record reflect Detective Adams' identification of the  
6 defendant?

7                   **THE COURT:** Yes, the record will note the  
8 identification of the defendant.

9 **BY MR. MARANGOLA:**

10 Q. All right. Detective Adams, I'd like to show you on your  
11 screen what's been received into evidence as Government's 1.  
12 Thank you, Ms. Rand.

13                   Do you see that on your screen?

14 A. Yes.

15 Q. All right. Do you see the target of the search warrant  
16 that you obtained for 299 Prospect on June 8th in Government's  
17 Exhibit 1?

18 A. Yes.

19 Q. Would you circle the photo of the person who was the  
10:03:08AM 20 target of that search warrant on June 8th? All right, let the  
21 record reflect you circled the photograph on the third row,  
22 the third photograph from the right; is that correct?

23 A. From the right? Yes.

24 Q. All right. Is that the same person you identified in court  
10:03:27AM 25 here as Xavier Torres?

1 A. Yes.

2 Q. Did the search warrant or search warrants that you  
3 obtained authorize a search of the defendant as well?

4 A. Yes.

10:03:40AM 5 Q. All right. If we could go back to Government's 64. Thank  
6 you, Ms. Rand.

7 When did you execute the search warrant at 299  
8 Prospect Avenue?

9 A. Approximately 6:20 in the evening.

10:03:57AM 10 Q. On the same day?

11 A. Yes.

12 Q. Of June 8th?

13 A. June 8th, yes.

14 Q. So you received a call, obtained a warrant and executed it  
10:04:05AM 15 all in the same day?

16 A. Yes.

17 Q. About -- and you said it was about 6 in the evening?

18 A. Approximately 6:20 we made entry, yes.

19 Q. 6:20, all right. Were you present for that?

10:04:15AM 20 A. Yes.

21 Q. Can you tell the jury what type of search warrant did you  
22 obtain for 299 Prospect?

23 A. A no-knock search warrant.

24 Q. And can you explain to the jury what that means, a  
10:04:28AM 25 no-knock search warrant?

1 A. It means we don't have to announce our presence to execute  
2 the search warrant.

3 Q. All right. And for this no-knock entry who would make  
4 entry into the premises?

10:04:39AM 5 A. This one in particular was our SWAT team.

6 Q. All right. What was your role in connection with the  
7 execution of the search warrant at 299 Prospect?

8 A. I was assigned to the perimeter.

9 Q. When you say you were assigned to the perimeter, can you  
10 explain what that role was for the jury?

11 A. Basically what it sounds like, I run the perimeter of the  
12 property in case someone runs, throws something out the  
13 window, or outside.

14 Q. Were you in police gear that day?

10:05:06AM 15 A. Yes.

16 Q. All right. Were you also with uniformed patrols as well?

17 A. Yes.

18 Q. Can you tell us what happened when the warrant was  
19 executed at 299 Prospect on June 8th, 2016 at about 6:20 in  
20 the evening?

21 A. Yes. The SWAT team pulled up first, Mr. Torres was found  
22 in front of the house, secured, we followed as the perimeter  
23 team, we took custody of Mr. Torres, and they did the entry.

24 Q. All right. Were there other individuals in front of 299  
25 Prospect Avenue as well?

1 A. Yes.

2 Q. And did the SWAT team detain those individuals as well?

3 A. Yes.

4 Q. All right. So after the defendant and other individuals  
10:05:53AM 5 were detained initially by SWAT, then SWAT made the entry?

6 A. Yes.

7 Q. And what did you do?

8 A. At that point I went over to Mr. Torres and began to  
9 search him.

10 Q. All right. So you took custody of the defendant from  
11 someone who had initially secured him?

12 A. Yes.

13 Q. All right. And so we're clear, the person that you took  
14 custody of and that you searched, do you see him in court here  
10:06:20AM 15 today?

16 A. Yes, Mr. Torres.

17 Q. All right. Is he the person you previously identified as  
18 Xavier Torres?

19 A. Yes.

20 Q. Okay. And identified in Government's Exhibit 1?

21 A. Yes.

22 Q. All right. The defendant was outside of 299 Prospect when  
23 he was taken into custody; is that correct?

24 A. Yes, he was right in front.

25 Q. All right. When was he taken into custody, if you recall,

1 just prior to the entry?

2 A. Yes, it would have been right about 1820 -- I'm sorry,  
3 6:20 p.m..

4 Q. All right. You said you searched the defendant?

10:06:55AM 5 A. Yes.

6 Q. Can you tell the jury what, if anything, you observed on  
7 the defendant when you searched him in front of 299 Prospect?

8 A. He had a cell phone on him, a black Samsung flip phone;  
9 and some cash.

10:07:10AM 10 Q. All right. Do you recall where the black Samsung flip  
11 phone was?

12 A. His right pant pocket.

13 Q. All right. At this time I'm going to show you what's not  
14 in evidence, I'd like you to take a look at Government's 231.

10:07:31AM 15 And 232. Do you recognize what's shown in Government's 231  
16 and 232?

17 A. Those are two photos taken by our unit of the cell phone I  
18 recovered.

19 Q. All right. Do Government's 231 and 232 fairly and  
10:07:52AM 20 accurately show the cell phone, the black flip phone that you  
21 recovered from the defendant on June 8th, 2016 outside of 299  
22 Prospect Avenue?

23 A. Yes.

24 MR. MARANGOLA: At this time I'd offer Government's  
10:08:04AM 25 231 and 232.

1                   **MR. VERRILLO:** No objection.

2                   **THE COURT:** Exhibit 231 and 232 will be received in  
3 evidence.

4                   ( **WHEREUPON**, Government's Exhibits 231-232 were  
10:08:18AM 5 received into evidence ).

6                   **BY MR. MARANGOLA:**

7                   Q. All right. Detective, after you seized the phone shown  
8 here in Government's 231 from the defendant's pants pocket,  
9 was it maintained in police custody?

10:08:35AM 10 A. Yes.

11 Q. All right. What did you do in connection with that phone  
12 as part of your involvement in the case that day or the next  
13 day?

14 A. That day I had gotten the phone number for the cell phone  
10:08:49AM 15 from the informant and I called the number and it rang. The  
16 next day I took it in front of a judge to get a search warrant  
17 to get a dump on the phone.

18 Q. All right. Do you recall the number that you dialed that  
19 the informant had given you before you obtained the search  
10:09:14AM 20 warrant for the phone?

21 A. 468-0306.

22 Q. And what was the area code of that number?

23 A. Oh, sorry. 716.

24 Q. And you obtained that number 716-468-0306 prior to  
10:09:30AM 25 executing the search warrant at 299 Prospect?

1 A. Yes.

2 Q. All right. And when you later -- after recovering this  
3 phone from the defendant's pocket -- when you dialed that  
4 number, what happened?

10:09:41AM 5 A. It rang.

6 Q. The phone shown here in Government's 231 rang?

7 A. Yes.

8 Q. All right. So the flip phone in the defendant's pocket  
9 had the same number as the number the CI had given you or the  
10 corrections officer had given you earlier in the day?

11 A. Yes.

12 Q. Do you recall about when it was that you called the flip  
13 phone here shown in Government's 231?

14 A. It was about 8 o'clock I think.

10:10:08AM 15 Q. All right. Do you recall the number that you would have  
16 called it from?

17 A. Oh, no. That was a phone I had -- I'm sorry. It was a  
18 restricted number because I dialed star 67 first.

19 Q. So the number you were using to call into Government's 231  
20 here was a restricted number?

21 A. Yes.

22 Q. All right. Did you ultimately obtain a search warrant --  
23 when you say to do a dump, is that a term commonly referred to  
24 to describe the extraction of the data from a phone?

10:10:37AM 25 A. Yes.

1 Q. And did you obtain a search warrant to do an extraction  
2 for the phone seized from the defendant?

3 A. Yes.

4 **MR. MARANGOLA:** At this time, Your Honor, I'd like  
10:10:49AM 5 to read from Government's -- from Court Exhibit 1, the  
6 stipulation between the parties on page 11.

7 Government's Exhibit 231A is the device data report  
8 containing the data forensically retrieved from a black  
9 Verizon Samsung cell phone with phone number 716-468-0306 that  
10:11:22AM 10 was seized at 299 Prospect Avenue, Buffalo, New York on  
11 June 8th, 2016.

12 At this time I'd offer Government's 231A.

13 **MR. VERRILLO:** No objection.

14 **THE COURT:** Exhibit 231A is received in evidence.

10:11:40AM 15 (**WHEREUPON**, Government Exhibit 231A was received  
16 into evidence).

17 **BY MR. MARANGOLA:**

18 Q. All right. Detective Adams, prior to testifying here  
19 today have you had occasion to review the extraction report  
10:11:58AM 20 here marked Government's 231A?

21 A. Yes.

22 Q. And is this the extraction report for that flip phone that  
23 you removed from the defendant's pocket?

24 A. Yes, this is the front page of it.

10:12:11AM 25 Q. It's a multi-page document; is that right?

1 A. Yes.

2 Q. And if we can blow up the top portion of it. Your name  
3 appears there; is that correct?

4 A. Yes.

10:12:25AM 5 Q. Although it appears in the column examiner name, were you  
6 the actual one who conducted the extraction?

7 A. No.

8 Q. You were just the person who provided the search warrant  
9 so the examiner could do the extraction?

10:12:36AM 10 A. Yes.

11 Q. All right. Is the phone number that the informant  
12 provided you and that you dialed shown on Government's 231A in  
13 any location?

14 A. It is. It's on the page with the contacts on it.

10:12:56AM 15 Q. All right. If we could go to -- I believe it's page 3.

16 All right. Is the phone number for this phone, the flip phone  
17 from the defendant's pocket, shown anywhere on page 3?

18 A. Under the contact list, if you can see it, it's on line 1.

19 Q. All right. Is it listed next to any contact or is it above  
10:13:20AM 20 the contacts?

21 A. It's on line 1 above the contacts.

22 Q. All right. Is there a contact associated with it?

23 A. No.

24 Q. Because that's the number for the phone itself?

10:13:31AM 25 A. Correct.

1 Q. All right. If we can enlarge the first row. All right.  
2 Could you read us the phone number as it's set forth in the  
3 extraction for this flip phone?

4 A. 716-468-0306.

10:13:51AM 5 Q. All right. And if we could go then to the call log, which  
6 is on page 2. And if we could go to entry 2 and enlarge that,  
7 entry 2 in the call log. Do you see there's a -- what does  
8 this line indicate here next to entry 2 in the call log?

9 A. A missed call from a restricted number.

10:14:21AM 10 Q. And what's the date and time of that missed call?

11 A. June 8th, 2016 at 8:07 p.m.

12 Q. Does that correspond approximately to the time that you  
13 called this phone from your restricted number?

14 A. Yes.

10:14:35AM 15 Q. And if we could go to page 2, the timeline -- actually  
16 first page 3 because I think this is in reverse chronological  
17 order. Do you see -- if we could enlarge the number 33 from  
18 the timeline, which is the last entry of the timeline. What's  
19 the date shown on this outgoing call?

10:15:10AM 20 A. June 4th.

21 Q. All right. And June 4th, 2016?

22 A. Yes.

23 Q. All right. Then if we could go to the prior page, page 2,  
24 and look at the first -- all right. That's a missed call --  
10:15:30AM 25 actually, I'm sorry. Could we go to the third entry. All

1 right. That's an outgoing call and that's on June 8th, 2016?

2 A. Yes.

3 Q. So the call log for the phone shows activity between what  
4 two dates?

10:15:50AM 5 A. The 4th and the 8th.

6 Q. All right. That's it for this phone activity just between  
7 June 4th and June 8th?

8 A. Yes.

9 Q. And June 8th was the day you seized it?

10:15:59AM 10 A. Yes.

11 Q. Okay. If we could go back to Government's Exhibit 64. All  
12 right. You circled the house to the left of the tree in the  
13 center; is that right?

14 A. Yes.

10:16:15AM 15 Q. That address you testified is 299 Prospect?

16 A. Yes.

17 Q. All right. If we could pull up now Government's -- what's  
18 in evidence as Government's 225A. Go to page 51, entry 307 at  
19 the top. This is an incoming text from contact P. Under the  
10:16:49AM 20 words body on the right side of this exhibit, can you read us  
21 the text there?

22 A. Okay pa 299 Prospect Avenue.

23 Q. Is that the same or different address that you executed  
24 the search warrant at on June 8th, 2016?

10:17:04AM 25 A. Same.

1 Q. Is that the same or different address that the defendant  
2 was taken into custody at on June 8th, 2016?

3 A. The same.

4 Q. If we could go back to Government's 64. You testified  
10:17:24AM 5 that the house that's partially obscured by the tree next to  
6 299 is what address?

7 A. 297 Prospect.

8 Q. All right. If we could show you what's in evidence as  
9 Government's 100. If we could enlarge the corner of the  
10:17:42AM 10 envelope shown in the right portion of this. Do you see --  
11 can you read on the return address the name and address shown  
12 on the envelope here?

13 A. Xavier Torres, 297 Prospect, Buffalo, New York 14201.

14 Q. All right. Is that the same or different address than we  
10:18:05AM 15 just saw in Government's 64 that was partially obscured by the  
16 tree?

17 A. The same.

18 Q. Now, if we could go back to Government's 64. Detective  
19 Adams, you've been with the Buffalo Police Department, what  
10:18:24AM 20 did you indicate? About 20 years?

21 A. Yes.

22 Q. All right. Are you familiar with the area -- as a  
23 narcotics detective, are you familiar with the area around  
24 Prospect Avenue in the City of Buffalo?

10:18:34AM 25 A. Yes.

1 Q. All right. I'd like to show you what's in evidence as  
2 Government's 197. Do you see the photograph contained in  
3 Government's 197?

4 A. Yes.

10:18:46AM 5 Q. Do you recognize the area shown in the photograph marked  
6 in Government's 197?

7 A. Yes.

8 Q. And what do you recognize that area to be?

9 A. Hudson Street and Osborn Alley.

10:18:59AM 10 Q. Is that also in the City of Buffalo?

11 A. Yes.

12 Q. Can you give the jury an idea how far is it between Osborn  
13 Alley and 299 Prospect Avenue?

14 A. It's approximately four blocks west -- yeah, four blocks  
15 west of 299 Prospect, maybe a quarter mile.

16 Q. All right. All right, I'd like to pull up Government's  
17 225A. And go to the contact section and go to the contact No.  
18 25. Name for that contact is Pepe; is that correct,  
19 Detective?

20 A. Yes.

21 Q. And the phone number for that contact is what?

22 A. 468-0306.

23 Q. And it's a 716 --

24 A. 716 area code.

10:20:15AM 25 Q. Is that the same phone number or different phone number

1 than was for the phone that was removed from the defendant's  
2 pocket on June 8th, 2016?

3 A. Same.

4 **MR. MARANGOLA:** Thank you, Detective. Thank you,  
10:20:33AM 5 Your Honor. I have nothing further.

6 **THE COURT:** Thank you. Mr. Verrillo?

7 **CROSS-EXAMINATION**

8 **BY MR. VERRILLO:**

9 Q. Detective, can you hear me okay?

10 A. Yes, sir.

11 Q. Okay. Did you meet with the informant who was referred to  
12 as a former corrections officer?

13 A. Yes.

14 Q. And do you know what his name is?

10:20:51AM 15 A. Ronald Standish.

16 Q. And you had met with him on June 8th, 2016?

17 A. Yes.

18 Q. And as a result of that meeting, did you ask him to  
19 testify before Judge Fiorella?

10:21:06AM 20 A. Yes.

21 Q. And that was regarding your application for a search  
22 warrant at 299 Prospect, correct?

23 A. Yes.

24 Q. And did you base your application on what Mr. Standish  
10:21:18AM 25 told you?

1 A. Yes.

2 Q. And were you present during his testimony before the  
3 judge?

4 A. Yes.

10:21:24AM 5 Q. Was it unusual for the judge to have testimony before he  
6 would sign a search warrant?

7 A. Can you repeat that question?

8 Q. You had gone before the judge with Mr. Standish regarding  
9 the search warrant?

10:21:41AM 10 A. Yes.

11 Q. Do you know whether that was a common practice of the  
12 judge to have the witness come with you?

13 A. Yes.

14 Q. Okay. And you had discussed what was going to be testified  
10:21:52AM 15 to with him before he came -- before he went before the judge,  
16 correct?

17 A. Yes.

18 Q. And the search warrant that you had related to 299  
19 Prospect, the front lower and the rear lower, correct?

10:22:08AM 20 A. Yes.

21 Q. And what did you find in the front lower for 299 Prospect?

22 A. Nothing.

23 Q. And what did you find in the rear lower of 299 Prospect?

24 A. Nothing.

10:22:19AM 25 Q. When you would go in and do a search warrant such as this,

1 would one of the purposes be to try to find out any  
2 documentation or any evidence of occupancy by any particular  
3 individual?

4 A. It would.

10:22:34AM 5 Q. Okay. And did you find any evidence of any person  
6 occupying those properties -- that property?

7 A. Not that I recall, no.

8 Q. Okay. And that would include looking for things like mail,  
9 for example, if there was mail there?

10:22:50AM 10 A. Yes.

11 Q. Any particular clothing, whether men's or women's  
12 clothing, things of that nature?

13 A. Yes.

14 **MR. VERRILLO:** If I could just have one moment.

10:23:17AM 15 **BY MR. VERRILLO:**

16 Q. When you went into 299 Prospect, did you find a laptop or  
17 a computer there?

18 A. Not that I recall.

19 Q. Okay. Now, you had gone to 299 Prospect and the location  
10:23:38AM 20 was based on what Mr. Standish told you?

21 A. Yes.

22 Q. And had you gone with him to look at the property before  
23 conducting the search warrant application?

24 A. I personally did not.

10:23:48AM 25 Q. Okay. Do you know if anyone with the Buffalo Police

1 Department did that?

2 A. No. The investigator from Orleans County and the deputy  
3 sheriff from Erie County.

4 Q. Okay. You're saying they would have been involved in that?

10:24:01AM 5 A. Yes.

6 Q. Okay. And it's your testimony that you had acquired the  
7 cell phone from Mr. Torres' person?

8 A. Yes.

9 Q. So you had not found the cell phone in the property that  
10:24:33AM 10 you were searching?

11 A. In the property at 299 Prospect?

12 Q. Right.

13 A. No. It was on his person.

14 Q. And did you find any drugs on Mr. Torres when you searched  
10:24:44AM 15 him?

16 A. No, sir.

17 Q. Did you find any weapons on Mr. Torres when you searched  
18 him?

19 A. No.

10:24:55AM 20 **MR. VERRILLO:** I have nothing further. Thank you.

21 **THE COURT:** Thank you.

22 **MR. MARANGOLA:** May I, Your Honor?

23 **THE COURT:** Sure.

24 **REDIRECT EXAMINATION**

10:25:03AM 25 **BY MR. MARANGOLA:**

1 Q. Detective Adams, Mr. Verrillo asked you if you based your  
2 application for the search warrant on what Mr. Standish said,  
3 and I think you indicated yes. Did you also base that search  
4 warrant on other information?

10:25:18AM 5 A. Yes.

6 Q. All right. So it wasn't exclusively what Mr. Standish had  
7 provided?

8 A. Correct.

9 Q. And you didn't find drugs on the defendant?

10:25:34AM 10 A. No.

11 Q. You didn't find a gun on him?

12 A. No.

13 Q. You just found the phone that the CI said he used -- the  
14 phone that had the same number that Mr. Standish had given  
15 you?

16 A. Yes.

17 Q. And cash?

18 A. Yes.

19                   **MR. MARANGOLA:** Thank you.

10:25:52AM 20                   **THE COURT:** Anything further?

21                   **MR. VERRILLO:** I have nothing further. Thank you.

22                   **THE COURT:** You may step down. Thank you very  
23 much.

24                   (**WHEREUPON**, the witness was excused).

10:26:01AM 25                   **THE COURT:** Mr. Marangola?

1                   **MR. MARANGOLA:** Your Honor, on behalf of Ms. Kocher  
2 and Ms. McCreedy, the Government rests. Thank you.

3                   **THE COURT:** Ladies and gentlemen, at this time the  
4 Government has rested their proof. We do have an issue of law  
10:26:18AM 5 to discuss outside the presence of the jury.

6                   I ask the jury step down at this time. In the  
7 meantime, please do not discuss the matter or allow anybody to  
8 discuss the matter with you. Jury may step down.

9                   (**WHEREUPON**, the jury was excused).

10:26:31AM 10         **THE COURT:** Mr. Verrillo, do you have a motion?

11                  **MR. VERRILLO:** Yes, Your Honor. At this time the  
12 defendant Xavier Torres moves for a Judgment of Acquittal.

13                  The Government has failed to establish each and  
14 every element of the remaining drug conspiracy and possession  
10:27:25AM 15 of firearm -- furtherance of drug trafficking crime offenses.

16                  They have not proven the defendant agreed or had  
17 knowledge of an agreement or intended to participate in a  
18 conspiracy or acted in furtherance thereof.

19                  With respect to the firearm, the Government has  
10:27:42AM 20 failed to prove a nexus between any alleged possession and the  
21 drug trafficking crime.

22                  So I'd ask the Court to grant the motion and  
23 dismiss the indictment.

24                  **THE COURT:** Thank you. Mr. Marangola?

10:27:53AM 25         **MR. MARANGOLA:** Your Honor, the Government would

1 oppose the motion. As the Court knows, the evidence at this  
2 point is to be viewed in the light most favorable to the  
3 Government, and I think based on the multiple witnesses that  
4 have testified that the defendant participated in this  
10:28:08AM 5 conspiracy, and the firearms were possessed both by him and  
6 others to use in connection with the narcotics trafficking,  
7 that the Court should deny the motion. Thank you.

8                   **THE COURT:** Thank you. Yes, based upon the proof  
9 that's been presented at this point, there are issues of fact  
10:28:25AM10 for the jury on each of the elements of the narcotics  
11 conspiracy in Count 1, and Count 2 possessing, brandishing and  
12 discharging firearms in furtherance of a drug trafficking  
13 crime. Therefore, the motion for a Judgment of Acquittal  
14 pursuant to Rule 29 is denied.

10:28:47AM15                   Mr. Verrillo, do you expect to present any proof?

16                   **MR. VERRILLO:** Your Honor, I have spoken to my  
17 client. I've had a couple conversations with him related to  
18 his right to testify. I've advised him of his right to  
19 testify and right not to testify. It's my understanding that  
10:28:59AM20 he does not wish to testify.

21                   And as I indicated yesterday, attorney Molloy was  
22 available if there was going to be some discussion about the  
23 statement. Since that wasn't presented, he's not germane to  
24 anything. So we would not have any evidence to present.

10:29:15AM25                   **THE COURT:** Okay. Mr. Torres, you've heard what

1 your attorney just said?

2                   **THE DEFENDANT:** Yes, Your Honor.

3                   **THE COURT:** And do you understand you have a right  
4 to testify in the trial?

10:29:22AM 5                   **THE DEFENDANT:** Yes, Your Honor.

6                   **THE COURT:** Present witnesses?

7                   **THE DEFENDANT:** Yes, Your Honor.

8                   **THE COURT:** And subpoena witnesses for the trial?

9                   **THE DEFENDANT:** Yes, Your Honor.

10:29:27AM 10                  **THE COURT:** However, do you understand you cannot be  
11 compelled to do any of that because you have no burden of  
12 proof?

13                   **THE DEFENDANT:** Yes, Your Honor.

14                   **THE COURT:** And you elect in this case not to  
15 present any evidence; is that right?

16                   **THE DEFENDANT:** Yes, Your Honor.

17                   **THE COURT:** Including your own testimony?

18                   **THE DEFENDANT:** Yes, Your Honor.

19                   **THE COURT:** And do you understand if that is the  
20 case, at your request the Court will instruct the jury that  
21 they cannot make any unfair inference based upon your failure  
22 to testify because you have no burden of proof and the burden  
23 of proof rests on the Government?

24                   Do you understand that?

10:29:55AM 25                  **THE DEFENDANT:** Yes, Your Honor.

1                   **THE COURT:** Okay. Have you had adequate time to  
2 discuss all these issues with your attorney regarding proof  
3 and testifying?

4                   **THE DEFENDANT:** Yes, Your Honor.

10:30:03AM 5                   **THE COURT:** Okay. All right. Mr. Verrillo, will you  
6 be requesting the Court instruct the jury regarding the  
7 defendant not testifying in this matter?

8                   **MR. VERRILLO:** Yes, Judge.

9                   **THE COURT:** Okay, I will provide that instruction.

10:30:31AM10               I'll go through the general instructions that the  
11 Court intends to present to the jury.

12               I will define for the jury the province of the  
13 Court and the jury.

14               That the evidence in the case consists of the sworn  
10:30:53AM15 testimony of witnesses, any exhibits received in evidence, in  
16 this case also stipulations that were agreed to by the  
17 parties.

18               I will indicate that they can consider both direct  
19 and circumstantial evidence and define direct and  
10:31:11AM20 circumstantial evidence for them.

21               I will instruct the jury that their recollection  
22 will control.

23               That if the Court asked any questions of a witness,  
24 they can consider that. However, they should not assume that  
10:31:27AM25 the Court holds any opinion on the matters for which the

1 questions were addressed. It's up to them to determine the  
2 credibility of all the evidence.

3 I will instruct the jury that the attorneys have an  
4 obligation to object when the other side offers testimony they  
10:31:46AM 5 believe is not properly admissible. That the Court then made  
6 rulings regarding the admissibility of evidence.

7 The rulings by the Court do not indicate any  
8 opinion about the weight or effect of such evidence. Again,  
9 the jury are the sole judges of the credibility of the  
10:32:08AM 10 evidence.

11 I'll instruct the jury they are not to consider  
12 sympathy or punishment. Any sentencing issues are solely  
13 within the province of the Court.

14 I will instruct them on the presumption of  
10:32:26AM 15 innocence and the burden of proof by the Government, proof  
16 beyond a reasonable doubt as to each element of each of the  
17 charges, and define reasonable doubt for them.

18 I will indicate that the case is important to both  
19 the Government for the enforcement of criminal laws, as well  
10:32:51AM 20 as to the defendant who is charged with a serious crime.

21 I will instruct the jury it will be up to them to  
22 determine the credibility of witnesses and how much weight  
23 they determine to give to the testimony. I'll provide them  
24 with various tests they may wish to utilize to determine the  
10:33:09AM 25 credibility of the witnesses .

1           I will indicate that they can consider if a witness  
2 has any interest in the outcome of the case.

3           If any witness has shown to have willfully  
4 testified falsely, they have the right to conclude that the  
10:33:31AM 5 witness lied about other matters. They may disregard all of  
6 the witness's testimony, or may accept whatever part of it  
7 they deserve -- they believe deserved to be believed.

8           They may consider any prior inconsistent statements  
9 by a witness in determining the credibility of the witnesses.

10:33:51AM10          I will indicate in this case that accomplices were  
11 called by the Government. That the Government is permitted to  
12 provide such witnesses, and give them detailed instructions on  
13 the use of accomplice witness testimony.

14          I will further instruct them that they can consider  
10:34:11AM15 a witness' cooperation agreement; and if an individual did  
16 plead guilty based upon an agreement, they are not to consider  
17 that plea by that person as against the defendant on trial in  
18 this case.

19          I will indicate that they can consider both the  
10:34:33AM20 acts and declarations of co-conspirators that were made in  
21 furtherance of the conspiracy during the course of the  
22 conspiracy.

23          I will instruct the jury that there has been  
24 testimony regarding the attorneys for the Government  
10:34:51AM25 interviewing witnesses in preparing for the trial. That

1 there's nothing wrong in conducting such interviews. They  
2 should not draw any unfavorable inference from that conduct.

3 I will instruct the jury on the use of undercover  
4 agents and informants. There was extensive testimony  
10:35:10AM 5 regarding the use of such individuals in this case.

6 We did have a witness convicted of a felony; is  
7 that right? Who was that?

8 **MR. MARANGOLA:** Yes. Jose Figueroa and Roberto  
9 Figueroa were both convicted of felonies.

10:35:33AM 10 **THE COURT:** I will instruct the jury that they may  
11 consider a conviction of a felony in determining the  
12 credibility of a witness.

13 I will instruct the jury they may consider any bias  
14 or hostility a witness may have in their testimony.

10:35:55AM 15 I will instruct them that they have heard testimony  
16 of law enforcement officials. The fact that a witness is  
17 employed by a state, local or federal entity as a law  
18 enforcement officer does not mean their testimony is  
19 necessarily deserving of greater or lesser weight than that of  
10:36:13AM 20 any other witness. They may consider that witness's testimony  
21 and give it whatever weight they feel it deserves.

22 Mr. Verrillo, if you request I'll instruct the jury  
23 as follows: The law does not compel a defendant in a criminal  
24 case to take the witness stand and testify, and no presumption  
10:36:48AM 25 of guilt may be raised and no inference of any kind may be

1 drawn from the fact that the defendant has not testified.

2 As stated previously, the law never imposes upon a  
3 defendant in a criminal case the burden or duty of calling any  
4 witnesses or producing any evidence. This is a very important  
10:37:09AM 5 principle which you must be aware of and follow. It is a  
6 basic rule of our criminal justice system.

7 Are you requesting that?

8 **MR. VERRILLO:** Yes, Judge.

9 **THE COURT:** I will read that. Do you want the jury  
10:37:22AM 10 advised of the defendant's custodial status? It would be the  
11 following charge: Members of the jury, you may have noticed  
12 that the defendant is in custody. That fact has nothing to do  
13 with your determination of the issues in this case. You are  
14 not to speculate on his custodial status or in any way let it  
10:37:40AM 15 effect your determination.

16 **MR. VERRILLO:** Your Honor, you had said that  
17 originally I know.

18 **THE COURT:** Do you want that at this point?

19 **MR. VERRILLO:** So you can do that again, yeah.

10:37:52AM 20 **THE COURT:** I will do that. It's my understanding  
21 there were no admissions of the defendant entered in this  
22 trial; is that right?

23 **MR. MARANGOLA:** I don't believe there were any to  
24 police witnesses, no, Judge.

10:38:09AM 25 **THE COURT:** Okay. Obviously statements to

1 co-conspirators is a different matter.

2                   I will indicate to the jury that all available  
3 evidence need not be produced. That specific investigative  
4 techniques are not required.

10:38:34AM 5                   In this case there was evidence obtained pursuant  
6 to search warrants, and they can consider that particular  
7 evidence, give it whatever weight they feel to be appropriate.

8                   There were video recordings in this case. I will  
9 give the jury instruction regarding that.

10:39:02AM10                  I will also give the jury instructions regarding  
11 the use of stipulated evidence. In this case we have a number  
12 of stipulations that were agreed to by the parties.

13                  I will instruct the jury that the indictment itself  
14 is not evidence. If there's any variance regarding the dates  
10:39:22AM15 in which the crimes are alleged to have taken place, it does  
16 not matter if the charges occurred on or about a certain date  
17 or between on or about certain dates. The law requires only a  
18 substantial similarity between the dates alleged in the  
19 indictment and the dates established by the testimony and  
20 exhibits.

21                  I will provide them with detailed instructions on  
22 Counts 1 and 2, the conspiracy count and the firearms count,  
23 and provide that to counsel for you to review overnight. If  
24 you have any changes in those substantive charges, we can deal  
10:39:58AM25 with that in the morning.

1                   **MR. VERRILLO:** Okay.

2                   **THE COURT:** I will indicate to the jury they may not  
3 draw any inference, favorable or unfavorable, toward the  
4 Government or the defendant from the fact that any person in  
10:40:11AM 5 addition to the defendant is not on trial here. They also may  
6 not speculate as to the reasons why other persons are not on  
7 trial. Those matters are wholly outside their concern, have  
8 no bearing on their function as jurors.

9                   They are to consider only the evidence against this  
10:40:29AM 10 defendant and consider each of the counts separately.

11 Although in this case they will be instructed in the  
12 substantive charges that if they found the defendant not  
13 guilty on the first count, they cannot find him guilty of the  
14 second count, correct?

10:40:45AM 15                   **MR. MARANGOLA:** I'm sorry, Judge?

16                   **THE COURT:** If they find him not guilty of Count 1,  
17 they cannot find him guilty of Count 2.

18                   **MR. MARANGOLA:** Agreed.

19                   **THE COURT:** I will instruct the jury they can  
10:41:01AM 20 consider the exhibits that were received in evidence, and  
21 we'll go through those before we conclude today to be sure  
22 we're all on the same page regarding the exhibits.

23                   I will instruct them on the verdict form. And in  
24 this case a special verdict form indicating both Counts 1 and  
10:41:28AM 25 2 as well as weight s related to the conspiracy count; and on

1 Count 2 regarding the firearms count there were special  
2 interrogatories that the jury must respond to as well.

3                 I will indicate to the jury that their verdict must  
4 be unanimous.

10:41:47AM 5                 If they have any questions regarding testimony,  
6 they can have that reread. We would ask them to specify with  
7 as much detail as possible what testimony they need to be  
8 reread.

9                 If they want any of the exhibits, those can be  
10 produced for their examination. However, any of the  
11 controlled substances would be produced in the courtroom -- if  
12 the jury wants to examine any of those, they can do that in  
13 the courtroom. And also the videos that were played would  
14 also be displayed in the courtroom as well as the firearms.

10:42:02AM 15                 I will instruct the jury they can continue to take  
16 notes. That their notes are for their own assistance in  
17 refreshing their recollection. Their notes are confidential,  
18 will not be available for examination or review.

19                 Juror number 1 will be selected as the foreperson  
20 based upon the fact that person was the first person called  
21 and sworn.

22                 If they have any notes, questions for the Court  
23 regarding exhibits, law, or testimony, they must provide that  
24 in writing. And during those questions they should not  
10:43:08AM 25 indicate the status of their verdict. Simply -- or their

1 deliberations. Simply ask their questions.

2 We have four alternate jurors in this case. They  
3 will be kept in a private and secure place to await the  
4 rendition of the jury's verdict.

10:43:29AM 5 Mr. Marangola, do you have any exceptions or  
6 requests of the general charges?

7 **MR. MARANGOLA:** Judge, I have no exceptions to the  
8 general charges as outlined by the Court.

9 **THE COURT:** Okay. Mr. Verrillo?

10:43:40AM 10 **MR. VERRILLO:** Your Honor, I had filed originally a  
11 jury charge request back in February when we were together  
12 when there was a joinder of the various people, and I had  
13 requested Sands Section 3-3, impermissible to infer  
14 participation from mere presence.

10:44:00AM 15 I don't know if the Court gets into that --

16 **THE COURT:** Yes, that's part of the -- that's part  
17 of the conspiracy charge.

18 **MR. VERRILLO:** Or from mere association.

19 **THE COURT:** Yes, that's also part of the conspiracy  
20 charge.

21 **MR. VERRILLO:** Okay. And, Judge, I had originally  
22 objected to the *Pinkerton* language. So I just want to renew  
23 that objection.

24 **THE COURT:** Okay, as part of the substantive charges  
25 I do instruct the jury on aiding and abetting and *Pinkerton*.

1                   **MR. VERRILLO:** Okay.

2                   **THE COURT:** Obviously I'll note your objections to  
3 those.

4                   **MR. VERRILLO:** And then with respect to the  
10:44:29AM 5 cooperating witness situation, I referred to Sands No. 7-7  
6 dealing with the fact that they should be viewed with --  
7 exercising caution in evaluating their testimony, et cetera.

8                   I assume the Court has that --

9                   **THE COURT:** That is part of my --

10:44:45AM 10                   **MR. VERRILLO:** -- in its instructions?

11                   **THE COURT:** Yes.

12                   **MR. VERRILLO:** I'm trying to remember if there  
13 were -- in the testimony if there was any prior bad acts in  
14 terms of -- the conspiracy was -- alleged conspiracy was  
10:44:57AM 15 '15 -- was it '15 to '18?

16                   So I'm trying to remember if there was any bad acts  
17 before that offered by the Government because I had asked  
18 about that in terms of a limiting instruction.

19                   **THE COURT:** I don't believe there were.

10:45:11AM 20                   **MR. MARANGOLA:** I don't recall any, Judge.

21                   **THE COURT:** No.

22                   **MR. VERRILLO:** Okay. Then I did request with  
23 respect -- if you recall, Your Honor, a while back I asked  
24 about the nickname, and I asked for a limiting instruction.

10:45:22AM 25                   Obviously with the name Pistolita, that that be --

1 that's paragraph 5 of my request for charge, that there be  
2 some instruction that that has no -- offered for a limiting  
3 purpose of identifying the defendant, and that it's not --  
4 it's only considered for the purpose of identification because  
10:45:42AM 5 as we discussed previously, there was concern as to the name  
6 itself having some significance, which I understand it does,  
7 and it was something he's had since childhood. So I just ask  
8 for some instruction on that -- that the name --

9                   **THE COURT:** Did you provide --

10:45:55AM 10       **MR. VERRILLO:** I have it here, Judge.

11                   **THE COURT:** Let me check on that.

12                   **MR. VERRILLO:** Paragraph 5 of my February 10th  
13 submission.

14                   **THE COURT:** Okay.

10:46:02AM 15       **MR. VERRILLO:** And I would also ask in light of the  
16 testimony as the Court did, some limiting instruction on the  
17 photographs that were offered. If the Court could give  
18 something on that ?

19                   **THE COURT:** Yes, I will do that. I did that during  
10:46:21AM 20 the course of the trial, but I will do that again.

21                   **MR. MARANGOLA:** Judge, with respect to the limiting  
22 instruction request on the name Pistolita, I guess I would  
23 object only because there was testimony -- and Mr. Verrillo  
24 made it somewhat of an issue with respect to identification of  
10:46:39AM 25 his client -- there was testimony that the defendant was known

1 as Pistolita, P, and Pepe.

2                   There's been no argument or suggestion by the  
3 Government or any witness that those names meant anything  
4 negative or from which I think any negative connotation  
10:46:57AM 5 against the defendant could be drawn.

6                   We certainly don't intend to argue that because  
7 his -- one of his nicknames was Pistolita, that that makes him  
8 more likely to be found guilty or that the jury should infer  
9 guilt because of that.

10:47:13AM 10                   As we had indicated before, that was strictly  
11 elicited because that's how some of the individuals in the  
12 case knew him.

13                   But I would just -- since some of them knew him by  
14 a different name, if the Court is inclined to give any  
10:47:25AM 15 instruction, I would just ask that any of the nicknames be  
16 included with that.

17                   **THE COURT:** Okay. Let me look at the instruction  
18 suggested by Mr. Verrillo. I will review it with both of you  
19 tomorrow.

10:47:37AM 20                   **MR. MARANGOLA:** Thank you. With respect to the  
21 photographs, 193 specifically, the shot, I will just point out  
22 I don't even -- I have no objection obviously to the Court  
23 giving a further instruction similar to what it provided  
24 yesterday.

10:47:56AM 25                   I would note that I don't even think it was 30

1 seconds, I think it was about 15 seconds that picture was  
2 actually displayed to the jury. We kept it very short and for  
3 the limited purposes that we had mentioned.

4 So we plan to do that in the closing, just keep it  
10:48:12AM 5 short, but to tie it in for the purposes that we've offered  
6 it, namely, that it goes to the discharge and the, you know,  
7 co-conspirator being murdered in connection with this event.

8 **THE COURT:** Yes, I will do that.

9 **MR. MARANGOLA:** Thank you.

10:48:24AM 10 **THE COURT:** One more issue on the forfeiture.

11 There's a forfeiture of a weapon in this case. I don't  
12 believe either party has requested this be submitted to the  
13 jury in the case of a conviction; is that right?

14 The Government hasn't?

10:48:36AM 15 **MR. MARANGOLA:** We have not.

16 **THE COURT:** Mr. Verrillo?

17 **MR. VERRILLO:** We would not want it submitted to the  
18 jury, Your Honor. So the Court could deal with that issue.

19 **THE COURT:** Okay. All right. What we'll do is bring  
10:48:46AM 20 the jury back. Mr. Verrillo, you can rest in front of the  
21 jury as well.

22 I'll instruct them proof has been closed at this  
23 point. They will return tomorrow morning to hear the  
24 summation of counsel and then be instructed on the law.

10:49:08AM 25 And tomorrow we'll begin at 8:30, but I will

1 indicate to them that there's obviously no time limit to their  
2 deliberations.

3                   Summations, they will be instructed on the law,  
4 begin their deliberations and they'll have as much time as  
10:49:22AM 5 they want to deliberate. We'll get them lunch tomorrow  
6 obviously, okay?

7                   **MR. MARANGOLA:** Judge, the only other request -- I  
8 just remembered in the conspiracy charge, in the second  
9 element it talks about like a person's membership in the  
10:49:40AM10 conspiracy being presumed to continue unless there's been an  
11 affirmative act of termination.

12                  And I don't know that the defense intends to argue  
13 that there has been such an affirmative act of termination. I  
14 bring it up only because Mr. Verrillo mentioned in his opening  
10:49:59AM15 that -- something along the lines of the defendant wasn't  
16 around from either 2016 through 2018 or 2017 into 2018.

17                  And if he intends to argue essentially that his  
18 client withdrew from the conspiracy or that that shouldn't be  
19 considered as evidence against him, I would either request  
10:50:28AM20 that he not be permitted to argue that; or there be an  
21 additional instruction, and I can see if I can find one for  
22 the Court.

23                  I don't know if he intends to argue it, but an  
24 instruction because under the law it is actually his burden to  
10:50:42AM25 establish -- because it's an affirmative defense -- the

1 withdrawal from the conspiracy.

2                   **THE COURT:** There's been no proof of any withdrawal  
3 of the conspiracy.

4                   **MR. MARANGOLA:** I didn't expect that would be  
10:50:50AM 5 argued, but I just wanted to confirm. If it's not going to  
6 be, then I don't think we need any further charge on it. But  
7 if it is, then -- and Mr. Verrillo intends to argue that, then  
8 I think it might be appropriate.

9                   **THE COURT:** Mr. Verrillo?

10:51:02AM 10       **MR. VERRILLO:** Obviously I can argue my client  
11 wasn't there at certain times. I've said that so...

12                   **THE COURT:** Sure, that's different than --

13                   **MR. VERRILLO:** The evidence --

14                   **THE COURT:** -- than arguing he withdrew from the  
10:51:12AM 15 conspiracy or did anything affirmative to withdraw from the  
16 conspiracy.

17                   You're not going to argue that; is that right?

18                   **MR. VERRILLO:** I'm not arguing about withdrawal. I  
19 was going to argue in terms of the evidence against him,  
20 whether he was involved at a certain time. If he wasn't  
21 there -- obviously if he wasn't there, that's evidence in his  
22 favor.

23                   **THE COURT:** The conspiracy charge deals with that.

24                   **MR. MARANGOLA:** Okay. I think we're all set. Thank  
10:51:34AM 25 you, Judge.

1                   **MR. VERRILLO:** Judge, after you do what you need to  
2 do to release them, I want to renew my motion just for the  
3 record to, you know, after we're done.

4                   **THE COURT:** Okay, we'll do that. Oh, do you want to  
10:51:44AM 5 do the exhibits now? Why don't we do that to be sure we're  
6 all on the same page.

7                   The Court has received Exhibit 1, 3 -- was 4  
8 received? A photo of the defendant?

9                   **MR. MARANGOLA:** No.

10:52:21AM 10                   **THE COURT:** Okay. So Exhibits 1, 3, 15, 16, 18, 19,  
11 20, 21, 22, 23, 24, 29, 30, 35, 36, 37, 38, I do not have 39  
12 received; is that correct?

13                   **MR. MARANGOLA:** That's correct, Your Honor.

14                   **THE COURT:** 40, 43, 44, 45, 48, 51, 52, 53, 54, 55,  
10:53:09AM 15 57, 59, 60, 62, 63, 64, 67, 68, 69, 70, 71, 72, 73, 74, 75,  
16 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 90, 91, 92, 93, 94,  
17 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107,  
18 and 108 the first page and the certification only; is that  
19 correct?

10:54:17AM 20                   **MR. MARANGOLA:** Yes, Your Honor.

21                   **THE COURT:** Okay. 109, 114, 115, 116, 117, 118,  
22 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130,  
23 131, 132, 134, 135, 137, 137A, 142, 143, 144, 145, 146, 147,  
24 149, 152, 153, 156, 156A, 157, 157A, 160, 161, and 160 again  
10:55:27AM 25 is received for the first page and the last page only.

1                   **MR. MARANGOLA:** Yes.

2                   **THE COURT:** All right. 174, 175, 176, 178, 179, 181,  
3 187, 188, 189, 190, 191, 193, 195, 197, 200, 205, 206, 208,  
4 209, 214, 216, 217, 218, 220, 221, 224 -- is there some  
10:56:28AM 5 restriction on that one? I don't remember.

6                   **MR. MARANGOLA:** No, 224 was the box with the  
7 packaging and the straws.

8                   **THE COURT:** Okay. So 224 is received, 225A, 226,  
9 226A --

10:56:44AM 10                   **MR. MARANGOLA:** Judge, we didn't have 226, just  
11 226A.

12                   **THE COURT:** You're right, that's not received.

13                   **MR. MARANGOLA:** Okay.

14                   **THE COURT:** 226A is received, 226B is received, 227,  
15 228, 229, 231, 231A, 232, 234, 235, 236, 238, 237 was not  
16 received; is that right?

17                   **MR. MARANGOLA:** We have 237 in. Did you say 235?

18                   **THE COURT:** I have 235 Certificate of Conviction of  
19 Obed Torres.

20                   **MR. MARANGOLA:** Okay, yes.

21                   **THE COURT:** 236 was transcript of the plea of Obed  
22 Torres.

23                   **MR. MARANGOLA:** First and last page.

24                   **THE COURT:** First and last page?

25                   **MR. MARANGOLA:** For 235, for the transcript.

1                   **THE COURT:** 236.

2                   **MR. MARANGOLA:** No, 236 -- I'm sorry, is the  
3 Certificate of Conviction. That's --

4                   **THE COURT:** Do I have them backwards then? 235 I  
10:57:49AM 5 have certificate, and 236 the transcript.

6                   **THE CLERK:** That's what I have too.

7                   **THE COURT:** What do you have, Paula?

8                   **THE CLERK:** What you have is what I have.

9                   **MR. MARANGOLA:** We might have them backwards.

10                  **THE COURT:** The transcript in any event is only  
11 coming in for the first and last pages?

12                  **MR. MARANGOLA:** Yes.

13                  **THE COURT:** Okay. You do not have 237 or you do  
14 have 237?

10:58:07AM 15                  **MR. MARANGOLA:** We do have 237 in.

16                  **THE COURT:** Paula, do you have that?

17                  **THE CLERK:** I do.

18                  **THE COURT:** 237 is received, 238, 239, 240, 241,  
19 242, 243, 244, 246, 250, 251, 252, 253, 254, 269, 270, 271,  
10:58:35AM 20 272, 273, 274, 275, 278, 285, 286, 287, 288, 289, 290, 291,  
21 292, 293, 294, 295, 296, 297, 303, 304, 305, 306, 307, 312,  
22 313, 316, 317, 318, 319, 320, 321, 322, 323, 327, 328, 329,  
23 330, 331, 332, 335, 341, 342, 344, 348, 349, 350, 351.

24                  **MR. VERRILLO:** Plea agreements, Your Honor, are  
10:59:56AM 25 redacted so just --

1                   **THE COURT:** Are you talking about --

2                   **MR. VERRILLO:** 341, 342 -- 344 was a plea agreement.

3                   **THE COURT:** Yes, 341 is plea agreement of Axel  
4 Aponte Camacho, and that's redacted. What's redacted?

11:00:15AM 5                   **MR. VERRILLO:** As far as the factual information.

6                   **MR. MARANGOLA:** Factual basis has been redacted,  
7 Judge, from each of the plea agreements that have been  
8 received.

9                   **THE COURT:** So that's 341, 342 which is a plea  
11:00:25AM 10 agreement for Roberto Figueroa; and 343, which is the plea  
11 agreement for Victor Nunez; 344 is received entirely -- the  
12 cooperation agreement of Jose Figueroa?

13                   **MR. MARANGOLA:** Yes, 344. But 343 did not come in.

14                   **THE COURT:** Did I say that? Okay, I misspoke. 343  
11:00:44AM 15 is not in. Okay. There were a couple of defense exhibits  
16 marked for identification, but nothing received in evidence;  
17 is that correct?

18                   **MR. VERRILLO:** Correct.

19                   **THE COURT:** Okay.

11:01:07AM 20                   **MS. KOCHER:** Judge, I had Exhibit 29, the photograph  
21 of Mark Young, received subject to connection. We satisfied  
22 that.

23                   **MR. MARANGOLA:** I think it was initially received  
24 subject to connection, Judge, with Investigator Briganti's  
11:01:22AM 25 testimony; and then we had Roberto Figueroa identify him

1 afterwards so...

2                   **THE COURT:** Yes, I have it as received.

3                   **MR. MARANGOLA:** All right, thank you. Anything  
4 else?

11:01:36AM 5                   **MR. MARANGOLA:** No, thank you, Judge.

6                   **MR. VERRILLO:** Nothing further, Judge.

7                   **THE COURT:** All right, we'll bring the jury in,  
8 provide them with an instruction and break for the day, and  
9 then I'll provide you with the substantive charges.

11:05:59AM 10                   (**WHEREUPON**, the jury is present).

11                   **THE COURT:** Mr. Verrillo?

12                   **MR. VERRILLO:** Your Honor, the defendant rests.

13                   **THE COURT:** Members of the jury, at this time the  
14 proof in this case has been closed. The next step in this  
15 process will be for you to hear the summation of counsel.

16                   We're not going to do that today. We're going to  
17 recess for the day, bring you in tomorrow morning at 8:30, and  
18 then you'll hear the summation of counsel; then I will  
19 instruct you on the laws, the rules and the principles that  
20 will guide your deliberations.

21                   Now, the summations provide the attorneys with an  
22 opportunity to review the evidence, submit it to you for your  
23 consideration to consider the facts, inferences and  
24 conclusions which they contend may be properly drawn from the  
25 evidence.

1           If you find that an attorney has accurately  
2 summarized and analyzed the evidence, if you find the  
3 inferences and conclusions which you've been asked to draw are  
4 reasonable, logical and consistent with the evidence, then you  
11:07:52AM 5 may adopt those inferences and conclusions.

6           You, members of the jury, are the finders of fact.  
7 It's for you and you alone to determine the facts in this case  
8 from the evidence that you believe to be truthful and  
9 accurate.

11:08:08AM10           Thus, you should remember that whatever the  
11 attorneys say, however they say it is simply argument  
12 submitted for your consideration.

13           Remember also the attorneys are not witnesses in  
14 the case so, therefore, if an attorney asserts as fact  
11:08:23AM15 something that is not based on the evidence, you can disregard  
16 it.

17           Remember, nothing the attorneys say at any time is  
18 evidence, so nothing they say in their summations is evidence.  
19 You've heard the evidence and you must decide the case on the  
11:08:38AM20 evidence as you find it and the law as I will explain it to  
21 you.

22           Third, during the summations the attorneys'  
23 recollection of the evidence may in good faith differ from the  
24 recollection of the other attorney or from your own  
11:08:51AM25 recollection. The attorneys will undoubtedly differ regarding

1 the conclusions they believe may be properly drawn from the  
2 evidence.

3 It's your recollection, your understanding, your  
4 evaluation of the evidence which will control. You and you  
11:09:09AM 5 alone are the judges of the facts in this case.

6 If during your deliberations you need to have any  
7 recollection refreshed through the testimony, that can be  
8 done. You can have a portion or all of the testimony of a  
9 witness read back to you.

11:09:23AM 10 Remember, under the law I am responsible for  
11 explaining the law to you.

12 Now, we are going to reassemble tomorrow morning at  
13 8:30 when you'll hear the summation of counsel, instructions  
14 by the Court, and then you'll begin your deliberations. So  
11:09:37AM 15 there's no time limit for that, so please plan to be here for  
16 as long as you need to be tomorrow. We will provide you with  
17 lunch, but be willing and be able to take as much time as you  
18 need for this case.

19 It's obviously very important to the Government and  
11:09:53AM 20 very important to the defendant in this case, so you need to  
21 give it your attention tomorrow.

22 Now, you've heard a lot of evidence in this case.  
23 It's not the time to make up your mind or discuss this case  
24 with anybody. To do so would be highly improper and would  
11:10:08AM 25 also be unfair to both of the parties in this case. I know

1 you've abided by that admonition in the past.

2                 Please do not do any research on any issues related  
3 to this case on any parties, witnesses, factual issues, legal  
4 issues, or locations. To do so would be unfair because the  
11:10:27AM 5 parties could not challenge that in any way.

6                 Please understand you have to base your decision  
7 only on the evidence you've heard in this courtroom, and then  
8 the arguments of counsel you'll hear, and the instructions I  
9 will provide you on the law.

11:10:41AM 10                 So with that understanding the jury may step down  
11 until 8:30 tomorrow morning. Thank you. Have a good night.

12                 (**WHEREUPON**, the jury was excused).

13                 **THE COURT:** Thank you. We'll stand in recess.

14                 **MR. MARANGOLA:** Thank you, Judge.

11:11:33AM 15                 (**WHEREUPON**, proceedings adjourned at 11:12 a.m.)

16                                  \* \* \*

17                 CERTIFICATE OF REPORTER

18  
19                 In accordance with 28, U.S.C., 753(b), I certify that  
20 these original notes are a true and correct record of  
21 proceedings in the United States District Court for the  
22 Western District of New York before the Honorable Frank P.  
23 Geraci, Jr. on November 3rd, 2021.

24                 S/ Christi A. Macri

25                 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)  
Official Court Reporter